Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of AT&T for Interim Declaratory Ruling and Limited Waivers	))	WC Docket No. 08-152

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Global Crossing North America, Inc. ("Global Crossing"), hereby submits the following comments on the Petition of AT&T Inc. ("AT&T") for Interim Declaratory Ruling and Limited Waivers[1] (the "Petition") in the above-captioned docket. Global Crossing provides telecommunications solutions over the world's first integrated global IP-based network. Its core network connects more than 390 cities and 30 countries worldwide, and delivers services to nearly 700 major cities in 60 countries and 6 continents around the globe. Global Crossing's services are global in scale, linking the world's enterprises, governments, and carriers with customers, employees, and partners worldwide in a secure environment that is ideally suited for IP-based business applications, allowing e-commerce to thrive. The company offers a full range of managed data and voice products, including VoIP services, to more than 40 percent of the Fortune 500, as well as 700 carriers, mobile operators and ISPs.

INTRODUCTION

The Petition is one of three interrelated filings in which AT&T requests that the Commission take broad action to address the intercarrier compensation morass. Global Crossing agrees with AT&T that there is an acute need for comprehensive reform that establishes complete rate uniformity within an administratively workable framework. Unique among

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[1] Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152 (filed July 17, 2008).

nations, the United States is the only country that differentiates traffic types for purposes of intercarrier compensation, adding a layer of complexity to what is already universally a contentious issue. Indeed, Global Crossing has been a tireless contributor for many years to industry efforts to develop consensus reform proposals, and was a signatory both to the Missoula Plan and its predecessor developed by the Intercarrier Compensation Forum.[2] The well-documented need for greater uniformity and certainty in the intercarrier compensation rules that govern the exchange of interstate, intrastate, local, interexchange, Internet protocol, and other classes and categories of traffic has only increased in recent years.

Global Crossing remains a staunch proponent of decisive Commission action to unify terminating intercarrier compensation rates across all traffic types. Doing so would create a simpler, more administratively workable regulatory framework conducive to technological innovation. Earlier this month, Global Crossing, together with 12 other carriers and trade associations, submitted a letter to the Commission renewing the call for uniform termination rates of no more than $0.0007 per minute for all carriers and traffic types. Such reform would: (1) facilitate the "continued development and deployment of new and innovative IP services, and the broadband platforms on which those services depend"; and (2) create "regulatory clarity" as to the "compensation rules applicable to all traffic exchanged with or on the public switched telephone network," including IP-based voice services.[3] AT&T's Petition seeks an outcome

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[2] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Ex Parte* Letter of the NARUC Task Force on Intercarrier Compensation (filed July 24, 2006) (transmitting the Missoula Plan); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Intercarrier Compensation and Universal Service Reform Plan of the Intercarrier Compensation Forum (filed Oct. 5, 2004).

[3] *IP-Enabled Services*, WC Docket No. 04-36, Letter from AT&T, CompTIA, CTIA – The Wireless Association, Global Crossing, The Information Technology Industry Council, National Association of Manufacturers, New Global Telecom, PointOne, Sprint Nextel Corp., The Telecommunications Indistry Association, T-Mobile, Verizon, and The VON Coalition to

consistent with these longstanding Global Crossing goals. Global Crossing supports this effort and looks forward to working with the Commission and industry to ensure its success.

Nevertheless, Global Crossing believes that AT&T's reform proposals stop short. To ensure that the benefits of reform have the greatest opportunity to materialize, the Commission should take steps to ensure that AT&T does not eviscerate the benefits of its own proposal by continuing to raise its rates for interstate switched dedicated transport services in areas where it has received pricing flexibility on switched access services, particularly "Phase II" pricing flexibility for such services. If switched access providers are permitted simply to raise dedicated transport rates in areas where the level of competition no longer would support a grant of Phase II pricing flexibility to offset required reductions in other switched access rates, the Commission and the industry are unlikely to reap the full benefits of reform.

DISCUSSION

Global Crossing wholeheartedly agrees that lower and more uniform intercarrier compensation rates will serve the public interest by bringing greater certainty to the regulatory environment, reducing litigation costs associated with disputes,[4] increasing economic efficiency, and facilitating rational economic decision-making by customers. While AT&T's Petition proposes important steps toward achieving that goal for terminating access, the Petition addresses only a portion of total switched access termination costs. In addition to the usage sensitive rate elements that AT&T addresses in its Petition, there exist non-usage sensitive rate

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Chairman Martin and Commissioners Copps, McDowell, Adelstein, and Tate (filed Aug. 6, 2008), at 2-3.

4 In this regard, Global Crossing disagrees with AT&T's characterization of the facts underlying its ongoing dispute with Global Crossing, referenced in the letter (page 11) from Robert W. Quinn, Jr. addressing the need for comprehensive intercarrier compensation and universal service reform that accompanied the Petition. Global Crossing vigorously disputes AT&T's allegations in that matter, which remains pending.

elements associated with interstate switched dedicated transport services, which can comprise as much as 55 percent of the total cost of call termination, and which include entrance facilities,[5] the flat-rated portions of tandem-switched transport services,[6] and direct end office trunking services.[7] In Global Crossing's experience, in areas where the Commission has granted AT&T Phase II pricing flexibility for switched dedicated transport service, AT&T has imposed on its customers steady increases in its rates for those services, because its rates are no longer constrained by the Commission's price cap rules or transport rate structure.[8] Because such transport is an essential component of the switched access services Global Crossing requires to reach its customers, it is critically important that the Commission's reforms account for the cost of this service to switched access customers.

In the early 2000s, even as the price cap ILECs were lowering interstate switched access charges toward average traffic sensitive ("ATS") rate targets the Commission established in the *CALLS Order*,[9] the Commission began granting these carriers pricing flexibility for switched and special access services pursuant to its 1999 pricing flexibility rules. Today, the Commission has granted all of the large price cap ILECs substantial Phase I and Phase II pricing

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[5] 47 C.F.R. § 69.110.

[6] These services include dedicated transport from the serving wire center to the tandem switching office, *see* 47 C.F.R. § 69.111(a)(2)(iii), as well as the associated multiplexing services, *see* 47 C.F.R. § 69.111(*l*)(2).

[7] 47 C.F.R. § 69.112.

[8] 47 C.F.R. § 69.727(b)(1-3); *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 9043 (1999) ¶ 155 ("*Pricing Flexibility Order*").

[9] *Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part sub nom. Texas Office Of Public Utility Counsel, et al. v. FCC,* 265 F.3d 313 (5th Cir. 2001).

flexibility for these services.[10] Phase I pricing flexibility permits a price cap ILEC to offer

[10] AT&T-affiliated ILECs, for example, have sought or obtained Phase II pricing flexibility for dedicated transport services in at least 114 metropolitan statistical areas ("MSAs") across the nation. *See Pleading Cycle Established for Bellsouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing No. 08-02, Public Notice, 23 FCC Rcd 1220 (2008) (seeking comment on BellSouth petition for Phase II pricing flexibility for dedicated transport services in the Albany, GA, Athens, GA, Alexandria, LA, Anderson, SC and Florence, SC MSAs); *Petition of Indiana Bell Telephone Company, Incorporated (Ameritech Indiana) and the Ohio Bell Telephone Company (Ameritech Ohio) for Pricing Flexibility Under § 69.727 of the Commission's Rules for the Specific MSAs*, WCB/Pricing No. 07-07, Order, 22 FCC Rcd 9174 (2007) (granting Phase II pricing flexibility for the Youngstown-Warren, OH MSA); *Ameritech Operating Companies Petition for Pricing Flexibility for Dedicated Transport and Special Access Services*, WCB/Pricing File No. 06-8, *Southwestern Bell Telephone Company Petition for Pricing Flexibility for Dedicated Transport and Special Access Services*, WCB/Pricing File No. 08-9, Order, 21 FCC Rcd 5172 (2006) (granting Phase II pricing flexibility for dedicated transport services in the Fayetteville-Springdale, AR, Cincinnati, OH-KY-IN, Hamilton-Middletown, OH, Jackson, MI, and Saginaw-Bay City-Midland, MI MSAs); *Ameritech Operating Companies Petition for Pricing Flexibility for Dedicated Transport and Special Access Services*, WCB/Pricing File No. 05-14, *Southern New England Telephone Company Petition for Pricing Flexibility for Dedicated Transport and Special Access Services*, WCB/Pricing File No. 05-15, *Southwestern Bell Telephone Company Petition for Pricing Flexibility for Dedicated Transport and Special Access Services*, WCB/Pricing File No. 05-16, Order, 20 FCC Rcd 9883 (2005) (granting Phase II pricing flexibility for dedicated transport services in the Louisville, KY-IN, New Haven, CT, New London-Norwich, CT, Lawton, OK, McAllen-Edinburg-Mission, TX, Memphis, TN-AR-MS, Tyler, TX, and Wichita, KS MSAs); *SBC Communications Inc. Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies, Nevada Bell, Pacific Bell Telephone Company, Southern New England Telephone Company, and Southwestern Bell Telephone Company*, WCB/Pricing No. 03-8, Memorandum Opinion and Order, 18 FCC Rcd 10167 (2003) (granting Phase II pricing flexibility for dedicated transport services in the Lansing-East Lansing, MI, Akron, OH, Eau Claire, WI, Janesville-Beloit, WI, Racine, WI, Sheboygan, WI, Reno, NV, Bakersfield, CA, Fresno, CA, Oxnard-Simi Valley-Ventura, CA, Stockton, CA, Fort Smith, AR-OK, Midland, TX, and Santa Rosa-Petaluma, CA MSAs); *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing No. 02-24, Memorandum Opinion and Order, 17 FCC Rcd 23725 (2002) (granting Phase II pricing flexibility for dedicated transport services in the Evansville, IN/KY, Lexington-Fayette, KY, Owensboro, KY, and Clarksville-Hopkinsville, TN/KY MSAs); *Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies*, CCB/CPD No. 01-32, *Pacific Bell Telephone Company*, CCB/CPD No. 01-33 and 02-03, *Southern New England Telephone Company*, CCB/CPD No. 01-34, *and Southwestern Bell Telephone Company*, CCB/CPD No. 01-35, Memorandum Opinion and Order, 17 FCC Rcd 6462 (2002) (granting Phase II pricing flexibility for dedicated transport services in the Chicago, IL, Decatur, IL, Detroit-Ann Arbor, MI, Flint, MI, Grand Rapids, MI, Madison, WI,

volume and term discounts on covered services, but requires the ILEC, in addition, to maintain generally available price cap tariffs for all access services, ensuring that access customers continue to have the opportunity to purchase services that comply with the Commission's price cap rules and ATS rates.[11] Phase II pricing flexibility, in contrast, permits the ILEC to offer the service entirely outside of the constraints of the Commission's Part 69 rate structure and Part 61 price cap rules.[12] As a result, price cap ILECs routinely exclude demand for services offered pursuant to a grant of pricing flexibility from the computation of price cap rates, and the determination whether they meet the *CALLS Order*'s ATS rate targets.

Los Angeles/Long Beach, CA, Bridgeport, CT, Hartford, CT, and St. Louis, MO MSAs); *Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility*, CCB/CPD No. 00-26, *Petition of Pacific Bell Telephone Company for Pricing Flexibility*, CCB/CPD No. 00-23, *Petition of Southwestern Bell Telephone Company for Pricing Flexibility*, CCB/CPD No. 00-25, Memorandum Opinion and Order, 16 FCC Rcd 5889 (2001) (granting Phase II pricing flexibility for dedicated transport services in the Champaign-Urbana, IL, Rockford, IL, Springfield, IL, Evansville, IN, Indianapolis, IN, Kalamazoo, MI, Cleveland-Lorain-Elyria, OH, Columbus, OH, Dayton, OH, Toledo, OH, Milwaukee-Waukesha, WI, San Francisco/Oakland, CA, Sacramento, CA, San Diego, CA, San Jose, CA, Austin-San Marcos, TX, Amarillo, TX, Dallas/Fort Worth, TX, Corpus Christi, TX, Houston, TX, Lubbock, TX, San Antonio, TX, Kansas City, MO-KS, Springfield, MO, Little Rock, AR, Oklahoma City, OK, Tulsa, OK, and Topeka, KS MSAs); *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-20, Memorandum Opinion and Order, 15 FCC Rcd 24588 (2000) (granting Phase II pricing flexibility for dedicated transport services in the Birmingham, AL, Huntsville, AL, Mobile, AL, Montgomery, AL, Daytona Beach, FL, Gainesville, FL, Jacksonville, FL, Melbourne-Titusville-Palm Bay, FL, Miami-Fort Lauderdale-Hollywood, FL, Orlando, FL, Panama City, FL, Pensacola, FL, West Palm Beach-Boca Raton, FL, Atlanta, GA, Augusta, GA/SC, Columbus, GA-AL, Savannah, GA, Louisville, KY, Baton Rouge, LA, Lafayette, LA, Lake Charles, LA, Monroe, LA, New Orleans, LA, Shreveport, LA, Biloxi-Gulfport, MS, Jackson, MS, Asheville, NC, Charlotte-Gastonia, NC, Greensboro-Winston-Salem-High Point, NC, Raleigh-Durham, NC, Wilmington, NC, Charleston-North Charleston, SC, Columbia, SC, Greenville-Spartanburg, SC, Chattanooga, TN-GA, Knoxville, TN, Memphis, TN, Nashville-Davidson, TN MSAs).

[11] *Pricing Flexibility Order* at ¶ 122.

[12] *Id.* at ¶ 141.

Today, AT&T's rates for switched dedicated transport services are spiraling steadily upward, because of the combined effects of widespread pricing flexibility[13] and industry consolidation. In the context of special access services, before its merger with SBC Communications, AT&T Corp. petitioned the Commission for relief, stating, "[t]he Bells' claims that their rates are constrained by market forces were false when made, are false today, and will remain false for the foreseeable future. The Bells have not used rate deregulation to meet competition, but to gouge both their captive special access customers and the general public. The Bells' already exorbitant special access rates and revenues have soared, and the ever-increasing annual returns that the Bells enjoy on those services are now as much as 50 percent or more."[14] Precisely these considerations prompted the Commission to elicit the commitments from SBC Communications and Verizon, in connection with their mergers with AT&T Corp. and BellSouth, on the one hand, and MCI on the other, to temporarily freeze special access rates and adopt other competitive safeguards on the pricing and availability of these services.[15]

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[13] *See, e.g.*, U.S. General Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80 (Nov. 2006) ("Our comparison of 1,152 prices found that, as of June 2006, the price-flex list price was on average higher than the price-cap price, regardless of whether the price was for channel terminations, interoffice mileage, DS-1 or DS-3 service, different term arrangements, or different density zones . . . . [P]rices are higher in phase II areas on average, [and] prices have increased over time in phase II areas.") (Available at http://www.gao.gov/new.items/d0780.pdf). While the GAO report appears to focus on special access services, Global Crossing has observed the same phenomenon in connection with rates for interstate switched dedicated transport access services.

[14] AT&T Corp. Petition for Rulemaking To Reform Carrier Rates For Interstate Special Access Services, RM-10593 (filed Oct. 15, 2002) at 3. *See also id.* at 13 ("The tariffed rate in Phase II MSAs no longer subject to price cap regulation is equal to or higher than the rate for the same service in areas that remain subject to price cap regulation for virtually every special access service in every state for every Bell.")

[15] AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) Appendix F; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC

Global Crossing is concerned that, unless the Commission imposes appropriate safeguards on the pricing of the Bells' interstate switched access dedicated transport service, the hoped-for benefits of comprehensive intercarrier compensation reform will fail to materialize. As AT&T's revenues from regulated intrastate and interstate terminating switched access services decline, it will be under increasing pressure to increase revenue from other sources. Already, Global Crossing has felt the sting of regular periodic increases in AT&T's rates for interstate switched access dedicated transport service; the reforms proposed in AT&T's Petition threaten to exacerbate this problem. While AT&T's Petition seeks reductions in intercarrier rates for regulated switched access services, chiefly on the intrastate side, it leaves deregulated interstate rates for essential components of switched access service entirely out of the equation. AT&T proposes that carriers would make up for these lost revenues through increased subscriber line charges and originating interstate access charges,[16] yet nothing in the Petition or the Commission's existing rules would prevent AT&T from ***also*** continuing to increase interstate switched dedicated transport rates in areas where it has received Phase II pricing flexibility. In this respect, the AT&T Petition permits, and even invites, double recovery of any access revenue reductions.

If the Commission adopts AT&T's proposal, Global Crossing urges the Commission to take appropriate steps to ensure that marketplace competition is in fact adequate to discipline rates for interstate switched dedicated transport services in areas where the price cap ILECs have received Phase II pricing flexibility. In areas where the competitive threshold for Phase II pricing flexibility is no longer met, Global Crossing urges the Commission to take steps

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Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005) ¶ 51; Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) ¶ 51.

[16] Petition at 8-9.

to ensure that rate increases for such services do not undermine the benefits of broad intercarrier compensation reform. For instance, in areas that no longer satisfy the competitive threshold to justify Phase II pricing flexibility, the Commission should implement a cap, similar to those adopted in connection with the SBC/AT&T, Verizon/MCI, and AT&T/BellSouth mergers, on rates for such service. Specifically, the Commission should cap interstate switched dedicated transport rates in such areas at the level that the Part 61 price cap rules would produce for the relevant ILEC, had the ILEC never received Phase II pricing flexibility.[17] The Commission should require each such ILEC, in connection with its 2009 Annual Access Tariff Filing, to make this calculation and establish rates for interstate switched dedicated transport rates in compliance therewith. In the alternative, the Commission should cap rates for interstate switched dedicated transport rates in such areas at their current levels.

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[17] To the extent that a switched access customer has negotiated a lower rate pursuant to a volume or term discount, contract tariff, or otherwise, that rate would continue to apply. Any rate above the capped level, whether in the ILEC tariff, or negotiated pursuant to a contract, volume or term discount, or otherwise applicable, should be entitled to renegotiate these agreements with no termination liabilities or other contract penalties. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-96, First Report and Order, FCC 96-325, 11 FCC Rcd 15499 (1996), at paras. 1094-95 (subsequent history omitted).

CONCLUSION

Global Crossing strongly supports the need for intercarrier compensation reform, and, as a general matter, supports the reforms proposed by AT&T. However, to achieve lower and more uniform intercarrier compensation rate levels, the Commission must take appropriate steps to ensure that AT&T does not undermine the benefits of intercarrier compensation reform by increasing its rates for interstate switched dedicated transport services in areas where it has received Phase II pricing flexibility to offset any decreases in other intercarrier compensation levels. Failure to constrain such rates in areas that no longer meet the competitive threshold required to justify a grant of Phase II pricing flexibility will undermine the benefits the Commission's reforms otherwise seek. Global Crossing looks forward to working with the Commission in this proceeding to achieve long overdue intercarrier compensation reform to the benefit of consumers and the industry alike.

Respectfully submitted,

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